

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**WILLIE LEE BRYANT, #128787**

**PLAINTIFF**

**v.**

**CAUSE NO. 3:13CV1028-LG-JCG**

**SCOTT MARQUART, ET AL.**

**DEFENDANTS**

**ORDER ADOPTING REPORT AND RECOMMENDATION  
AND GRANTING MOTION FOR SUMMARY JUDGMENT**

This cause comes before the Court on the Report and Recommendation [50] of United States Magistrate Judge John C. Gargiulo, entered in this cause on January 21, 2015. The defendants in this prison conditions action filed a motion for summary judgment pursuant to Fed. R. Civ. P. 56. The plaintiff did not file a response, nor did he file an objection to Magistrate Judge Gargiulo's determination that summary judgment in favor of the defendants was appropriate.<sup>1</sup> Therefore, the Court need only review the Report and Recommendation and determine whether it is either clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Plaintiff's claims concern the grievance and disciplinary procedures at the East Mississippi Correctional Facility. Plaintiff alleges his constitutional rights were violated when the defendants imposed certain disciplinary measures after a hearing involving his violation of a rule, and also in the way the defendants processed his grievance about the hearing procedure. Magistrate Judge Gargiulo

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<sup>1</sup> The Report and Recommendation was delivered via certified mail on January 23, 2015. (Acknowledgment of Receipt, ECF No. 51).

examined the evidence produced in support of the summary judgment motion, and also that produced at an omnibus hearing. He found there was nothing unconstitutional about the process afforded to plaintiff, and the privileges he lost as a result of being found guilty of the rule violation were not protected liberty interests. The Magistrate Judge further found that plaintiff had failed to show he had been prejudiced by the processing of his grievance, as plaintiff had been able to present his challenge to the defendants' actions to this Court for consideration on the merits. The Magistrate Judge found no evidence supporting an Equal Protection claim, and noted that plaintiff cannot bring § 1983 claims under a *respondeat superior* theory. Magistrate Judge Gargiulo recommended that all of these claims be dismissed without prejudice pursuant to Rule 56(a). As a suggestion of death had been filed in this case in regard to defendant Joyce Graham and no substitution of her estate had occurred, the Magistrate Judge found that Fed. R. Civ. P. 25(a) required dismissal of defendant Graham.

After having reviewed the Report and Recommendations, the record in this case, and the relevant law, the Court finds the Magistrate Judge's conclusions neither clearly erroneous nor contrary to law. The Court will grant the defendants' summary judgment motion and dismiss plaintiff's claims. Because all of the claims were considered on their merits, the dismissal will be with prejudice.

**IT IS THEREFORE ORDERED AND ADJUDGED** that the Report and Recommendation [50] of United States Magistrate Judge John C. Gargiulo entered in this cause on January 21, 2015, should be, and the same hereby is, adopted as

the finding of this Court.

**IT IS FURTHER ORDERED AND ADJUDGED** that the defendants' Motion for Summary Judgment [42] is **GRANTED**. Plaintiff's claims against defendant Graham are **DISMISSED** with prejudice pursuant to Fed. R. Civ. P. 25(a). All remaining claims are **DISMISSED** with prejudice pursuant to Fed. R. Civ. P. 56(a).

**SO ORDERED AND ADJUDGED** this the 25<sup>th</sup> day of February, 2015.

s/ *Louis Guirola, Jr.*  
LOUIS GUIROLA, JR.  
CHIEF U.S. DISTRICT JUDGE